

# In the Court of Appeals of the State of Alaska

**Richard DeRemer,**  
Appellant,

v.

**State of Alaska,**  
Appellee.

Court of Appeals No. **A-13002**

## **Order**

Temporary Restraining Order

Date of Notice: **4/3/2019**

Trial Court Case No. **3PA-17-01363CI, 3PA-04-02795CR,**

The Appellant, Richard DeRemer, is a prisoner in state custody who is representing himself in this appeal. This appeal arises from the dismissal of Mr. DeRemer's second petition for post-conviction relief. On March 21, 2019, Mr. DeRemer filed a request that this Court grant a restraining order preventing the Department of Correction from enforcing a policy that restricts the amount of "legal property" he may possess while actively litigating on-going legal actions. In essence, Mr. DeRemer argues that this Department policy violates his right of access to the courts.

According to the documents attached to Mr. DeRemer's motion, the Department of Corrections has enacted an internal policy — Policy 811.05 — which states that "Each prisoner, regardless of location or status shall be issued with two (2) property boxes." The policy provides that prisoners will be allowed the equivalent of one box of legal property and two boxes of personal property in the prisoner's cell, but then also states that all property in the prisoner's cell must be able to be stored within the "two (2) grey, plastic totes made available in the prisoner's assigned cell." Any property in excess of this shall be considered contraband and seized. This policy goes into effect on April 15, 2019.

It is not clear to this Court that the Department will store legal property that is in excess of the Department's policy limits. Nor is it obvious that if this property is stored, that the property will be stored in a manner that maintains the security of the

property, and that provides a prisoner reasonable access to the property. To the contrary, based on the policy provided by Mr. DeRemer, it appears that legal property exceeding the space provided by the totes in the prisoner's cell will be considered contraband, which suggests that the property will be destroyed. Additionally, the policy requires all prisoners to disburse all property that does not fit within the two totes provided them — which also suggests that the Department does not intend to store legal property that will not fit into the totes, even property that is required by the prisoner for his or her current litigation.

It is possible that the Department has a procedure to store excess legal property outside of the prisoner's cell, and to do so in a way that ensures the property is secure and that prisoners have reasonable access to the property in order to timely respond to the demands of on-going litigation. But the State has not responded to Mr. DeRemer's motion, either to provide an explanation of the Department's policies, or to otherwise oppose Mr. DeRemer's request for a restraining order.

According to Mr. DeRemer's pleadings, he is currently litigating three cases (including this case) in the Alaska Court System. He asserts that the documents he currently has relating to these three cases amounts to approximately 10,000 pages of material, a number which likely exceeds the amount the Department allows him to maintain in his cell. It appears to this Court that if the Department policy is enforced, then the Department will seize as contraband legal property involved in Mr. DeRemer's on-going litigation. In short, it appears that allowing the Department to enforce this policy would violate Mr. DeRemer's right of access to the courts.

Under Alaska law, when a court is asked to issue an interlocutory injunction, the court must weigh the potential injuries to the parties:

The showing required to obtain a preliminary injunction depends on the nature of the threatened injury. If the [moving party] faces the danger of irreparable harm and if the opposing party is adequately protected, then [the court applies] a balance of hardships approach in which the [moving party] must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit. If, however, the [moving party's] threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then [the moving party must make] a clear showing of probable success on the merits.

*Misyura v. Misyura*, 244 P.3d 519, 521-22 (Alaska 2010).

Given the circumstances of this case, this Court concludes that there is a substantial probability that the Department's legal property limitation does infringe Mr. DeRemer's right of access to the courts. This Court also infers, from the fact that the State did not oppose or seek to defend the legal property limit, that the Department will face only minimal administrative hardship if this Court orders the Department to not implement the policy limiting legal property in Mr. DeRemer's case until his on-going litigation, including this appellate case, is complete.

That said, the Court is concerned that the Department may not have had a full opportunity to respond to Mr. DeRemer's motion. It appears that the motion was served only on the Office of Criminal Appeals rather than directly on the Department of Corrections. Accordingly, the Court concludes that because the policy is set to go into effect on April 15, 2019, the best course of action is to temporarily grant Mr. Deremer's restraining order to maintain the status quo while the Department has an opportunity to

clarify its intended actions in relationship to this new policy.

For these reasons, Mr. DeRemer's request for a restraining order is GRANTED under the following terms:

1. Effective immediately, the Department of Corrections shall not enforce Policy 811.05 (dated 1/24/2019 and 2/14/2019) limiting Mr. DeRemer's "legal property" in Mr. DeRemer's on-going legal cases. This order will remain in force until after the Department has an opportunity to directly respond to Mr. Deremer's motion and the Court has an opportunity to rule on the matter.

2. If, in the interim, either Mr. DeRemer or the Department believes that a modification of this order is necessary, they may apply to this Court.

3. The Clerk of the Appellate Court shall serve a copy of this Order on the Department of Corrections. The Department's response (or its notice that it will not file a response) is due on or before April 18, 2019.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

  
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Sarah Anderson, Deputy Clerk

cc: Office of the Commissioner

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